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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,728	12/20/2001	Dominic Fulginiti	042390.P13349	9784

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EXAMINER

SHRADER, LAWRENCE J

ART UNIT

PAPER NUMBER

2124

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/027,728

Applicant(s)

FULGINITI ET-AL.

Examiner

Lawrence Shrader

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This office action is in response to the application filed on 12/20/2001.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anand et al., U.S. Patent 6,810,478 (hereinafter referred to as Anand) in view of Slivka et al., U.S. Patent 6,256,668 (hereinafter referred to as Slivka).

#### **In regard to claim 1:**

*"receiving through a network an indication from a device;*

*upon determining from the indication that the device is in a state in which a first system has not been loaded on the device, instructing the device through the network to load the first system;"*

*upon receiving through the network from the device an indication that the first system has been loaded, indicating through a user interface that the device is in a state in which the device is available to load an operating system selectable through the user interface."*

Anand discloses a remote booting network. An indication is sent from a client to a network server and a first instruction is received to load a first system (an operating system specific bootstrap), which is loaded on the client (e.g., Figure 4, ref. nos. 418 and 420). The operating system specific bootstrap, after being loaded, then processes the download of the

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proper operating system. Anand does not disclose a user interface to select the operating system. However, Slivka discloses a method for obtaining software from a network wherein the user selects the operating system (e.g., Figure 4B, ref. no. 86). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine the downloading system taught by Anand with the user selection of software to be downloaded as taught by Slivka, because if more than one operating system is available, the download is not conducted without the user's permission providing a level of control as taught by Slivka at column 8, lines 42 – 45.

**In regard to claim 2, incorporating the rejection of claim 1:**

*“...further comprising:*

*upon a selection of an operating system, instructing the device through the network to load the operating system; and*

*upon receiving through the network from the device an indication that the operating system has been loaded, indicating through the user interface that the device is in a state in which an operating system has been loaded for the device.”*

Anand discloses a remote booting network. An indication is sent from a client to a network server and a first instruction is received to load a first system (an operating system specific bootstrap), which is loaded on the client (e.g., Figure 4, ref. nos. 418 and 420). The operating system specific bootstrap, after being loaded, then processes the download of the proper operating system. Although all the protocols to load the software are present, Anand does not explicitly disclose a user interface to indicate that the device is in a state wherein the operating system has been loaded. However, Slivka discloses a method for obtaining software from a network wherein the user selects the operating system (e.g., Figure 4B, ref. no. 86) and an indication through a user interface that the operating system has been loaded to the device

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(column 8, lines 33 – 42). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine the downloading system taught by Anand with the indication to the user that the operating system has been downloaded Slivka, because a user would want to have an indication if any further action is necessary as taught by Slivka at column 8, lines 38 – 42.

**In regard to claim 3, incorporating the rejection of claim 2:**

*“...further comprising:*

*upon receiving through the network from the device the indication that the operating system has been loaded, indicating through the user interface the operating system that has been loaded for the device.”*

Anand discloses a remote booting network. An indication is sent from a client to a network server and a first instruction is received to load a first system (an operating system specific bootstrap), which is loaded on the client (e.g., Figure 4, ref. nos. 418 and 420). The operating system specific bootstrap, after being loaded, then processes the download of the proper operating system. Although all the protocols to load the software are present, Anand does not explicitly disclose a user interface to indicate that the device is in a state wherein the operating system has been loaded. However, Slivka discloses a method for obtaining software from a network wherein the user selects the operating system (e.g., Figure 4B, ref. no. 86) and an indication through a user interface that the operating system has been loaded to the device (column 8, lines 33 – 42). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine the downloading system taught by Poli with the indication to the user that the operating system has been downloaded Slivka, because a user

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would want to have an indication if any further action is necessary as taught by Slivka at column 8, lines 38 – 42.

**In regard to claim 4, incorporating the rejection of claim 2:**

*“...further comprising:*

*upon receiving the indication that the operating system has been loaded, indicating through the user interface that the device is in a state in which the device is available to return to the state in which an operating system has not been selected for the device;*

*upon an indication to return the device to the state in which an operating system has not been selected for the device, instructing the device through the network to load the first system; and*

*upon receiving an indication through the network from the device that the first system has been loaded, indicating through the user interface that the device is in the state in which the device is available to load an operating system selectable through the user interface.”*

Anand discloses a remote booting network. An indication is sent to a network server and a first instruction is received to load a first system (an operating system specific bootstrap), which is loaded on the client (e.g., Figure 4, ref. nos. 418 and 420). The operating system specific bootstrap then processes the download of the proper operating system. Anand does not disclose a user interface to select the operating system. Although all the protocols to load the software are present, Anand does not explicitly disclose a user interface to indicate the state of the device over the network and to return the device to a state for loading the operating system. However, Slivka discloses a method for obtaining software from a network wherein the user selects the operating system (e.g., Figure 4B ref. no. 86) and an indication through a user interface that the device is able to return to the state before selecting the operating system (e.g., Figure 4B, ref. nos. 90 and 98). Therefore, it would have been obvious to one skilled in the art at

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the time the invention was made to combine the downloading system taught by Anand with the feature of returning the device to a state before the loading of the operating system as taught by Slivka, because a user would want to have an indication if any further action is necessary as taught by Slivka at column 8, lines 38 – 42, or complete the download at another time as taught by Slivka at column 9, lines 8 – 42.

**In regard to claim 8 (a machine readable medium):** It is rejected for the same reason put forth in the rejection of the corresponding method of claim 1.

**In regard to claim 9,** incorporating the rejection of claim 8: It is rejected for the same reason put forth in the rejection of the corresponding method of claim 2.

**In regard to claim 10,** incorporating the rejection of claim 9: It is rejected for the same reason put forth in the rejection of the corresponding method of claim 3.

**In regard to claim 11,** incorporating the rejection of claim 9: It is rejected for the same reason put forth in the rejection of the corresponding method of claim 4.

**In regard to claim 15 (an apparatus):** It is rejected for the same reason put forth in the rejection of the corresponding method of claim 1.

**In regard to claim 16,** incorporating the rejection of claim 15: It is rejected for the same corresponding reasons put forth in the rejection of the corresponding method of claim 2.

**In regard to claim 17,** incorporating the rejection of claim 16: It is rejected for the same corresponding reasons put forth in the rejection of the corresponding method of claim 2.

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**In regard to claim 18**, incorporating the rejection of claim 17: It is rejected for the same reason put forth in the rejection of the corresponding method of claim 3.

**In regard to claim 19**, incorporating the rejection of claim 17: It is rejected for the same reason put forth in the rejection of the corresponding method of claim 4.

**In regard to claim 20**, incorporating the rejection of claim 19: It is rejected for the same corresponding reason put forth in the rejection of the corresponding method of claim 4.

**In regard to claim 21**, incorporating the rejection of claim 20: It is rejected for the same corresponding reason put forth in the rejection of the corresponding method of claim 4.

**In regard to claim 5:**

*"sending an indication through a network to a server;*

*upon receiving through the network from the server a first instruction responsive to the indication, the first instruction to load a first system, loading the first system from the server;*

*upon loading the first system, sending through the network to the server an indication that the first system has been loaded;*

*upon receiving from the server through the network a second instruction responsive to the indication that the first system has been loaded, the second instruction to load an operating system selected from a user interface, loading the operating system from the server; and*

*upon loading the operating system from the server, sending through the network to the server an indication that the operating system has been loaded."*

Anand discloses a remote booting network. An indication is sent to a network server and a first instruction is received to load a first system (an operating system specific bootstrap),



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which is loaded on the client (e.g., Figure 4, ref. nos. 418 and 420). The operating system specific bootstrap then processes the download of the proper operating system. Anand does not disclose a user interface to select the operating system. However, Slivka discloses a method for obtaining software from a network wherein the user selects the operating system (e.g., Figure 4B, ref. no. 86). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine the downloading system taught by Anand with the user selection of software to be downloaded as taught by Slivka, because if more than one operating system is available, the download is not conducted without the user's permission providing a level of control as taught by Slivka at column 8, lines 42 – 45.

**In regard to claim 6, incorporating the rejection of claim 5:**

*"...further comprising:*

*upon receiving through the network from the server a third instruction responsive to an indication to return the device to a state in which an operating system has not been selected for the device, the third instruction to load the first system, loading the first system from the server."*

Anand discloses a remote booting network. An indication is sent to a network server and a first instruction is received to load a first system (an operating system specific bootstrap), which is loaded on the client (e.g., Figure 4, ref. nos. 418 and 420). The operating system specific bootstrap then processes the download of the proper operating system. Anand does not disclose a user interface to select the operating system. Although all the protocols to load the software are present, Anand does not explicitly disclose a user interface to indicate the state of the device over the network and to return the device to a state for loading the operating system. However, Slivka discloses a method for obtaining software from a network wherein the user

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selects the operating system (e.g., Figure 4B ref. no. 86) and an indication through a user interface that the device is able to return to the state before selecting the operating system (e.g., Figure 4B, ref. nos. 90 and 98). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine the downloading system taught by Anand with the feature of returning the device to a state before the loading of the operating system as taught by Slivka, because a user would want to have an indication if any further action is necessary as taught by Slivka at column 8, lines 38 – 42, or complete the download at another time as taught by Slivka at column 9, lines 8 – 42.

**In regard to claim 7**, incorporating the rejection of claim 6:

*"...further comprising:*

*upon loading the first system from the server, sending through the network to the server an indication that the first system has been loaded."*

The Anand invention must have an inherent means to signal the end of the first system, whether it is the chain bootstrap code or the OS-specific bootstrap code. The OS-specific bootstrap must be loaded and a signal sent to the server in order to commence sending the operating system code.

**In regard to claim 12** (a machine readable medium): It is rejected for the same reason put forth in the rejection of the corresponding method of claim 5.

**In regard to claim 13**, incorporating the rejection of claim 12: It is rejected for the same reason put forth in the rejection of the corresponding method of claim 6.

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**In regard to claim 14**, incorporating the rejection of claim 13: It is rejected for the same reason put forth in the rejection of the corresponding method of claim 7.

**In regard to claim 22** (an apparatus): It is rejected for the same reason put forth in the rejection of the corresponding method of claim 5.

**In regard to claim 23**, incorporating the rejection of claim 22: It is rejected for the same corresponding reasons put forth in the rejection of the corresponding method of claim 6.

**In regard to claim 24**, incorporating the rejection of claim 23: It is rejected for the same corresponding reasons put forth in the rejection of the corresponding method of claim 6.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent 6,183,778 to Poli et al., regarding the download of an operating system to devices in a cable network.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Shrader whose telephone number is (571) 272-3734.

The examiner can normally be reached on M-F 08:00-16:30.

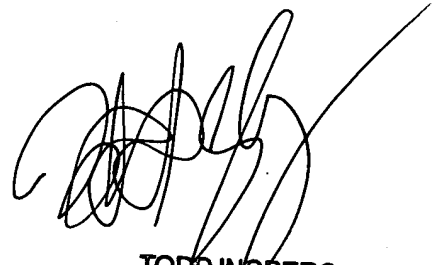
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lawrence Shrader  
Examiner  
Art Unit 2124

12 December 2004



TODD INGBERG  
PRIMARY EXAMINER